

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AMANDA DAWSON, GARRETT  
WOODRAL, DUSTIN WOODRAL,

Plaintiffs,

v.

COUNTY OF STANISLAUS, NATHAN  
CRAIN,

Defendants.

Case No. 1:20-CV-372-BAM

**ORDER ON CROSS MOTIONS FOR  
SUMMARY JUDGMENT**

(Doc. Nos. 31, 32)

Plaintiffs Amanda Dawson, Garrett Woodral, and Dustin Woodral (collectively, “Plaintiffs”) bring this civil action alleging a violation of their civil rights in connection with an allegedly unlawful attack by a Stanislaus County police dog on Donnie Woodral (“Mr. Woodral”) during a traffic stop. The parties’ cross-motions for summary judgment and summary adjudication have been fully briefed and are now pending before the Court.<sup>1</sup> (Docs. 31-32, 36, 38, 40-41.)

Having considered the record, the parties’ briefs and arguments, and the relevant law, the Court DENIES Plaintiffs’ motion for partial summary adjudication in its entirety, and GRANTS IN PART and DENIES IN PART Defendants’ motion for summary judgment.

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<sup>1</sup> The parties have consented to the jurisdiction of the United States Magistrate Judge for all purposes pursuant to 28 U.S.C. § 636(c). (Docs. 13, 53-54.)

## I. BACKGROUND

Plaintiffs initiated this action on March 11, 2020. (Doc. 1.) According to Plaintiffs' First Amended Complaint, Mr. Woodral was driving when Stanislaus County deputies pulled him over. (Doc. 18 ¶ 1.) In fear of prior encounters with abusive deputies, Mr. Woodral ran into a field. *Id.* Deputies released a police dog to follow Mr. Woodral, who was unarmed. *Id.* The dog attacked Mr. Woodral and continued to attack him even after deputies had arrived. *Id.* Deputies permitted the dog to continue to bite Mr. Woodral until the dog bit off Mr. Woodral's thumb. *Id.* Despite this injury, deputies refused to summon emergency medical attention. (Doc. 18 ¶ 2.) After waiting a significant amount of time, Mr. Woodral was seen by doctors, who attempted to reattach his thumb. *Id.* Mr. Woodral's thumb, although reattached, can no longer be moved, bent or otherwise controlled. *Id.* Furthermore, the police dog bit Mr. Woodral's stomach causing significant damages and scarring. *Id.*

Plaintiffs allege the following claims: (1) violations of the Fourth Amendment for Excessive Force under 42 U.S.C. § 1983 against Defendant Nathan Crain; (2) municipal and supervisory liability under 42 U.S.C. § 1983 against Defendant County of Stanislaus ("*Monell* liability" or "*Monell* claim"); (3) state civil rights violations under California Civil Code § 52.1, the Bane Act, against Defendants Nathan Crain and County of Stanislaus; (4) battery against Defendants Nathan Crain and County of Stanislaus, in violation of California Penal Code § 242; and (5) negligence against Defendants Nathan Crain and County of Stanislaus. (Doc. 18.)

Plaintiffs now move for partial summary adjudication against Defendants as to the liability portion of their excessive force, negligence, and *Monell* claims pursuant to Federal Rule of Civil Procedure 56. (Doc. 32.) Defendants oppose the motion, arguing that Plaintiffs are not entitled to summary adjudication as reasonable force was used. (Doc. 36.) Plaintiffs replied. (Doc. 40.) Defendants concurrently move for summary judgment on all of Plaintiffs' claims. (Doc. 31.) Plaintiffs opposed the motion, and Defendants replied. (Docs. 38, 41.)

On September 27, 2022, initial Plaintiff Donnie Woodral's children Amanda Dawson, Garrett Woodral, and Dustin Woodral were substituted for Donnie Woodral in this action as plaintiffs following Donnie Woodral's death. (Doc. 51.) On January 6, 2023, the parties filed a

1 stipulation of dismissal as to Plaintiffs' negligence claim against Defendants Crain and Stanislaus  
2 County. (Doc. 62.)

## 3 **II. SUMMARY JUDGMENT EVIDENCE**

4 Based upon the parties' Joint Statement of Undisputed Material Facts, Donnie Woodral  
5 was on supervised custodial release from state prison under Post Release Community Supervision  
6 and wore a GPS tracked ankle monitor on February 2, 2019. (Doc. 31-3, Joint Statement of Joint  
7 Undisputed Facts ("UF") ¶ 1.) Mr. Woodral was also out on bail for a 10851 CVC investigation  
8 involving a big rig and prior gas theft cases, and was a suspect in an investigation of a stolen fuel  
9 trailer conducted by Stanislaus County Sheriff;s Deputy. (UF ¶ 2.)

10 On the afternoon of February 2, 2019, Mr. Woodral was in possession of a stolen white  
11 Chevy Silverado truck and stolen 2018 Thunder Creek Fuel Trailer. (UF ¶¶ 3-4.) Mr. Woodral  
12 attempted to evade arrest by driving the stolen truck and trailer, in which he was accompanied by  
13 Dennis Herd, onto a dirt road in an orchard. (UF ¶¶ 6-7.) The parties' versions of the remaining  
14 events diverge.

### 15 **A. Plaintiffs' Version of Events<sup>2</sup>**

16 Mr. Woodral drove down a dirt road on top of an irrigation canal while being pursued by  
17 deputies. (Doc. 32-8, Plaintiffs' Statement of Separate Undisputed Facts, ("PSSUF") ¶ 4.) At  
18 that time, Defendant Crain had not received any information that anyone inside the truck was  
19 armed. (PSSUF ¶ 3.) A helicopter operated by the Stanislaus County Sheriff's Department  
20 joined the pursuit, spotting Mr. Woodral as he drove on the dirt road. (PSSUF ¶ 5.) Mr. Woodral  
21 continued to attempt to evade arrest, driving the stolen truck and trailer on the dirt road in an  
22 orchard. (PSSUF ¶ 6.) Mr. Woodral eventually pulled the truck to the side of the road and began  
23 fleeing on foot through a nearby orchard. (PSSUF ¶ 6.) Defendant Crain drove down a dirt road  
24 that cut through the orchard, roughly paralleling Mr. Woodral as he ran. (PSSUF ¶ 7.) Soon  
25 after, Defendant Crain spotted Mr. Woodral standing behind a tree. (PSSUF ¶ 8.)

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27 <sup>2</sup> Unless otherwise noted, Plaintiffs' version of events is derived primarily from their Statement of Separate  
28 Undisputed Facts ("PSSUF") and Joint Statement of Undisputed Facts ("UF") in support of their motion for partial  
summary adjudication. It is consistent with the version of events as set forth in their motion for partial summary  
adjudication and opposition to Defendants' motion for summary judgment. (Docs. 32, 38.)

1 As Mr. Woodral began running again, Defendant Crain got out of his vehicle and released  
2 his dog. (PSSUF ¶ 9.) Within five seconds of being released, the police dog made contact with  
3 Mr. Woodral. (PSSUF ¶ 10.) The dog bit Mr. Woodral's stomach, latching on as it took him to  
4 the ground. (PSSUF ¶ 11.) Mr. Woodral was unable to move because the dog was biting him  
5 while he laid on the ground on his back. (PSSUF ¶ 12.) The dog bit Mr. Woodral's right hand  
6 and arm for approximately 14 seconds before Defendant Crain reached Mr. Woodral and the dog.  
7 (PSSUF ¶ 13.) As he approached, Defendant Crain commanded Mr. Woodral to get on his  
8 stomach. (PSSUF ¶ 14; UF ¶ 12.) Mr. Woodral complied, rolling over to his stomach as the dog  
9 continued biting his arm. (PSSUF ¶ 15.) Mr. Woodral begged Defendant Crain to get the dog off  
10 of him and told Defendant Crain that he was not trying to run anymore. (PSSUF ¶ 16.) At that  
11 time, Mr. Woodral was not resisting arrest. (PSSUF ¶ 17.) Defendant Crain straddled the dog  
12 and picked it up by its vest while it continued biting Mr. Woodral's arm. (PSSUF ¶ 18.)

13 Defendant Crain held the dog like this for approximately 18 seconds before the dog  
14 released its bite. (*Id.*) In total, the dog bit and held Mr. Woodral for approximately 30-32  
15 seconds. (PSSUF ¶ 19; UF ¶ 11.) Though Mr. Woodral was compliant, Defendant Crain did not  
16 order the dog to release its bite because he was waiting for a fellow nearby deputy to come  
17 handcuff Mr. Woodral. (PSSUF ¶ 25, UF ¶ 14.)

18 Defendant Crain did not recall having to order the dog to release its bite of Mr. Woodral  
19 more than once and testified that he could not recall a single previous instance where this dog had  
20 failed to comply with the first order to release its bite. (PSSUF ¶¶ 20-21; UF ¶ 13.) Defendant  
21 Crain further testified that it ordinarily takes the dog "a couple of seconds" to release its bite.  
22 (PSSUF ¶ 22; Doc. 32-1, Ex. 1, Deposition of Nathan Crain at 77-78.) Defendant Crain testified  
23 that he has been trained that he is not permitted to continue using force against a person who is  
24 compliant, and he would not continue striking a suspect on the ground with a baton once the  
25 suspect became compliant. (PSSUF ¶ 23.) Defendant Crain also testified that he may not have  
26 ordered the dog to release its bite of Mr. Woodral even after Mr. Woodral was compliant because  
27 Mr. Woodral was not yet in handcuffs. (PSSUF ¶ 24.) Defendant Crain testified that allowing  
28 the dog to stay on its bite even after Mr. Woodral complied and Defendant Crain waited for

another deputy conformed with Defendant Stanislaus County's policy and training. (PSSUF ¶ 26.) Defendant Stanislaus County trained Defendant Crain that determining when the duration of a police dog bite becomes excessive is analyzed under the same framework as other uses of force. (PSSUF ¶ 27.)

As a result of the dog mauling, Mr. Woodral sustained injuries. (UF ¶ 10.) Principally, Mr. Woodral suffered a severe injury to his dominant right hand. (PSSUF ¶ 28.) Mr. Woodral's thumb was left with ligaments hanging out of it after the dog attack. (PSSUF ¶ 29.) Mr. Woodral was treated by paramedics at the scene of the incident and then transported to Doctor's Medical Center in Modesto by ambulance. (UF ¶ 16.) Mr. Woodral was admitted to the hospital, and on February 3, 2019, Dr. Frazier performed surgery on Mr. Woodral's right thumb and ring finger. (UF ¶ 17.)

These injuries caused long-term effects to Mr. Woodral's hand and fingers. After treatment, Mr. Woodral no longer had feeling in his thumb, and he could not bend it. (PSSUF ¶ 29.) Mr. Woodral could not make a fist with his right hand and could not pick up more than four pounds with it. (PSSUF ¶ 30.) Mr. Woodral also struggled to write his own name with his injured hand. (PSSUF ¶ 31.)

### **B. Defendants' Version of Events<sup>3</sup>**

Defendant Crain followed Mr. Woodral's truck, turning off Albers Road and onto a dirt road on a canal bank, next to an orchard. (Doc. 31-2, Defendants' Separate Statement of Undisputed Material Facts ("DSSUF") ¶ 13.) While Defendant Crain was following, the truck attempted to pull off the canal road and immediately became stuck in the mud. (DSSUF ¶ 15.) Defendant Crain observed a male in a dark shirt, later identified as Mr. Woodral, jump out of the driver's side and run westbound into the orchard. (*Id.*) Defendant Crain also observed a second subject exit the truck and run westbound into the orchard. (*Id.*) Defendant Crain then drove down an orchard road to set a perimeter approximately 200 yards west of where Mr. Woodral had

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<sup>3</sup> Unless otherwise noted, Defendants' version of events is derived primarily from their Separate Statement of Undisputed Material Facts ("DSSUF"), referenced above, in support of their motion for summary judgment and the Joint Statement of Undisputed Facts ("UF"). (Doc. No. 31-2 and 31-3.) It is consistent with the version of events as set forth in Defendants' opposition to Plaintiffs' motion for partial summary adjudication. (Docs. 31, 36.)

1 stopped, to try to contain the two subjects as they fled on foot. (DSSUF ¶ 16.) Air101 also  
2 followed Mr. Woodral overhead as he ran through the orchard and made announcements  
3 instructing Mr. Woodral to surrender. (DSSUF ¶ 17.)

4 Defendant Crain stopped his clearly marked vehicle approximately 25 feet away from Mr.  
5 Woodral. (DSSUF ¶ 18.) Mr. Woodral looked to be trying to hide behind a tree. (*Id.*)  
6 Defendant Crain observed that Mr. Woodral appeared to see him pull up, then Mr. Woodral  
7 darted in the opposite direction away from Deputy Crain. (*Id.*) Defendant Crain quickly exited  
8 his patrol vehicle and made a K9 announcement: “Sheriff K9, stop or you’ll get bit.” (DSSUF ¶  
9 19.) Mr. Woodral did not stop in response to Defendant Crain’s K9 announcement. (DSSUF ¶  
10 20.)

11 At this time, Defendant Crain was aware that Mr. Woodral had fled from arrest by  
12 Stanislaus County Sheriff’s Department several months prior. (DSSUF ¶ 21.) Defendant Crain  
13 was also aware that Mr. Woodral was a fleeing felon who had tried to evade arrest by driving  
14 haphazardly, who ignored law enforcement announcements and who continued to attempt to  
15 evade arrest by running through the orchard as the Sheriff’s helicopter was overhead. (*Id.*)  
16 Defendant Crain could not see the second subject who was also somewhere in the orchard. (*Id.*)  
17 Defendant Crain therefore released K9 Colt and commanded him to bite in order to apprehend  
18 Mr. Woodral. (*Id.*) Defendant Crain ran after K9 Colt and tried to maintain sight of him through  
19 the tree branches of the orchard as K9 Colt chased Mr. Woodral. (*Id.*) Though Defendant  
20 Crain’s view was obstructed by tree branches, and he could not see the instant that K9 Colt made  
21 contact with Mr. Woodral, Defendant Crain heard a male yell, “get this dog off me.” (DSSUF ¶  
22 22.)

23 When Defendant Crain arrived at the apprehension location in the orchard, he saw that  
24 Mr. Woodral was down on the ground as K9 Colt maintained his bite on Mr. Woodral’s right arm  
25 below the elbow. (DSSUF ¶ 23.) Defendant Crain then gave instructions to Mr. Woodral to lie  
26 on his stomach. (*Id.*) When Defendant Crain gave the command, no other deputies were in the  
27 immediate vicinity, Mr. Woodral had not been searched for weapons, and Mr. Woodral never  
28 declared that he was unarmed. (DSSUF ¶ 24.)

1 At that point, Defendant Crain did not believe it was practical to release K9 Colt and  
2 search Mr. Woodral on his own without waiting for another deputy to arrive. (DSSUF ¶ 25.)  
3 Defendant Crain also did not know if the second subject was nearby. (*Id.*) Based upon the  
4 information known to Defendant Crain, he considered Mr. Woodral to be dangerous, to have a  
5 propensity for violence, and to be able-bodied enough to run and/or reach for a weapon if  
6 released, despite the bite to his arm. (*Id.*) While Defendant Crain maintained control of K9 Colt  
7 by his collar, Defendant Crain believed it was neither safe nor practical for K9 Colt to release Mr.  
8 Woodral before a backup deputy was nearby and available to secure Mr. Woodral in handcuffs.  
9 (DSSUF ¶ 26.)

10 Defendant Crain then looked to see that Deputy Prasad was approaching his location in  
11 the orchard on foot. (DSSUF ¶ 27.) Defendant Crain maintained control of K9 Colt by his collar  
12 for up to 15 seconds until Defendant Crain determined it was safe to command K9 Colt to release  
13 the bite. (*Id.*) K9 Colt released Mr. Woodral at Defendant Crain's command, once Deputy  
14 Prasad was in close proximity. (*Id.*) Deputy Prasad put on rubber gloves per Defendant Crain's  
15 instructions, then placed Mr. Woodral in handcuffs. (Doc. 31-5, Crain Decl. ¶ 23; DSSUF ¶ 27)  
16 Mr. Woodral was searched and did not have any weapons on his person. (Doc. 31-5, Crain Decl.  
17 ¶ 23.) K9 Colt apprehended Mr. Woodral for approximately 30-32 seconds in total. (DSSUF ¶  
18 28.)

19 Defendant Crain did not see or believe that K9 Colt bit Mr. Woodral's torso during this  
20 apprehension. (DSSUF ¶ 29.) Defendant Crain has not seen evidence of a dog bite on Mr.  
21 Woodral's abdomen. (*Id.*) From Defendant Crain's witnessing of the apprehension, the bite was  
22 limited to Mr. Woodral's right arm and hand area and K9 Colt did not bite "off" Mr. Woodral's  
23 thumb. *Id.*

24 After Mr. Woodral was in handcuffs, Defendant Crain placed K9 Colt on lead and ran  
25 through the orchard to locate the second subject, Dennis Herd, who had also fled from the truck  
26 and into the orchard. (DSSUF ¶ 30.) Herd was safely taken into custody without the need of  
27 physical apprehension by K9 Colt. (*Id.*) After Herd was in custody, Defendant Crain drove back  
28 to Deputy Prasad and Mr. Woodral to get an update. (DSSUF ¶ 31.) Defendant Crain saw that

1 paramedics with Oak Valley ambulance were treating Mr. Woodral. (*Id.*) The ambulance  
2 transported Mr. Woodral from the scene of the incident to Doctors Medical Center in Modesto for  
3 treatment of his injuries. (*Id.*)

4 Several items were recovered and booked into evidence, including a flare gun, flares and  
5 narcotics. (DSSUF ¶ 33.) A knife and boxcutters were recovered from subject Herd's backpack  
6 at the scene. (*Id.*) After Detective Briggs gave Mr. Woodral his Miranda rights, Defendant Crain  
7 spoke with Mr. Woodral at the hospital. (DSSUF ¶ 32.) Defendant Crain asked Mr. Woodral  
8 about the use of K9 Colt. (*Id.*) Mr. Woodral stated to Defendant Crain: "You did your job and I  
9 should have not ran." (*Id.*) Defendant Crain asked Mr. Woodral if he heard the K9 warning.  
10 (*Id.*) Mr. Woodral replied "yeah, I heard you. I was trying to get away." (*Id.*)

11 Mr. Woodral's injuries included an open fracture with an open wound on the right thumb  
12 proximal phalanx and a closed fracture of the middle phalanx of Mr. Woodral's ring finger.  
13 (DSSUF ¶ 40.) According to Mr. Woodral's surgeon, Dr. Frazier, Mr. Woodral's thumb was not  
14 bitten off – the bite instead "caused an open wound on his thumb... and fractured it." (DSSUF ¶  
15 41.) After surgery, Dr. Frazier expected Mr. Woodral to have good function of his right hand and  
16 to be able to perform activities of daily living. (DSSUF ¶ 43; UF ¶ 16.) Dr. Frazier ordered  
17 postoperative care including IV antibiotic treatment. (*Id.*) Mr. Woodral left the hospital on  
18 February 4, 2019, against medical advice, without completing his treatment or wearing his splint  
19 to protect the bone repair. (DSSUF ¶¶ 43-44.) Mr. Woodral returned to the hospital on February  
20 19, 2019, after his right thumb was infected. (DSSUF ¶ 45.) According to Dr. Frazier, Mr.  
21 Woodral's prognosis was adversely affected by his noncompliance with the postoperative care  
22 plan. (*Id.*)

23 On August 11, 2020, in the County of Merced Superior Court, Mr. Woodral entered a plea  
24 of no contest to carjacking from [December] 14th, 2018, pursuant to California Penal Code  
25 Section 215, Subdivision (a). (DSSUF ¶ 50.) Carjacking is a "violent felony" under California  
26 Penal Code 667.5, Subdivision (c), Subdivision (17). (*Id.*) Mr. Woodral further entered a plea of  
27 no contest to grand theft on the same date, pursuant to California Penal Code Section 487,  
28 Subdivision (a). (*Id.*)

1 The use of K9 Colt to apprehend Mr. Woodral was reviewed and approved by the  
2 Stanislaus County Sheriff's Department K9 unit Sergeant LaBarbera. (DSSUF ¶ 34.) Defendant  
3 Crain received no adverse actions from the Stanislaus County Sheriff's Department for the use of  
4 K9 Colt in apprehending Mr. Woodral. (*Id.*) Defendant Crain believes that his use of K9 Colt to  
5 apprehend Mr. Woodral fell clearly within the guidelines of the County policy and was necessary  
6 given the circumstances. (DSSUF ¶¶ 35-36.) Deputy Crain believes he removed K9 Colt from  
7 the bite as soon as reasonably practical given the circumstances. (DSSUF ¶¶ 37-39.)  
8 Defendants' expert on K9 policies determined that the policies, practices and training of the  
9 Stanislaus County Sheriff's Department Canine Program meet national law enforcement  
10 standards and that the proper canine deployment procedures and policies were adhered to in  
11 apprehending Mr. Woodral. (DSSUF ¶¶ 46-48.)

### 12 III. LEGAL STANDARD

13 Summary judgment is appropriate when the pleadings, disclosure materials, discovery,  
14 and any affidavits provided establish that "there is no genuine dispute as to any material fact and  
15 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A material fact is  
16 one that may affect the outcome of the case under the applicable law. *See Anderson v. Liberty*  
17 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine "if the evidence is such that a  
18 reasonable [trier of fact] could return a verdict for the nonmoving party." *Id.* Summary judgment  
19 must be entered, "after adequate time for discovery and upon motion, against a party who fails to  
20 make a showing sufficient to establish the existence of an element essential to that party's case,  
21 and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S.  
22 317, 322 (1986).

23 The party seeking summary judgment "always bears the initial responsibility of informing  
24 the district court of the basis for its motion, and identifying those portions of the pleadings,  
25 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
26 which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S.  
27 3 at 323. The exact nature of this responsibility, however, varies depending on whether the issue  
28 on which summary judgment is sought is one in which the movant or the nonmoving party carries

1 the ultimate burden of proof. *See Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir.  
2 2007). If the movant will have the burden of proof at trial, it must “affirmatively demonstrate that  
3 no reasonable trier of fact could find other than for the moving party.” *Id.* (citing *Celotex*, 477  
4 U.S. at 323). In contrast, if the nonmoving party will have the burden of proof at trial, “the  
5 movant can prevail merely by pointing out that there is an absence of evidence to support the  
6 nonmoving party’s case.” *Id.*

7 If the movant satisfies its initial burden, the nonmoving party must go beyond the  
8 allegations in its pleadings to “show a genuine issue of material fact by presenting affirmative  
9 evidence from which a jury could find in [its] favor.” *FTC v. Stefanchik*, 559 F.3d 924, 929 (9th  
10 Cir. 2009) (emphasis in original). “[B]ald assertions or a mere scintilla of evidence” will not  
11 suffice in this regard. *Id.* at 929; *see also Matsushita Electric Industrial Co. v. Zenith Radio*  
12 *Corp.*, 475 U.S. 574, 586 (1986) (“When the moving party has carried its burden under Rule 56[],  
13 its opponent must do more than simply show that there is some metaphysical doubt as to the  
14 material facts.”) (citation omitted). “Where the record taken as a whole could not lead a rational  
15 trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita*,  
16 475 U.S. at 587 (quoting *First Nat’l Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 253, 289  
17 (1968)). Where, as here, the parties cross-move for summary judgment on a claim, the court is  
18 required to review the evidence submitted by the parties in support of their own motions and in  
19 opposition to the opposing party’s motion in deciding each summary judgment motion. *Fair*  
20 *Hous. Council of Riverside Cty., Inc., v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001)  
21 (finding district court was required to review the evidence properly submitted in support of  
22 plaintiffs’ motion for summary judgment to determine whether it presented a disputed issue of  
23 material fact precluding summary judgment on defendants’ motion for summary judgment);  
24 *Poway Unified Sch. Dist.*, 658 F.3d 954, 960 (9th Cir. 2011) (stating court considers each party’s  
25 evidence on cross motions to evaluate whether summary judgment was appropriate).

26 In resolving a summary judgment motion, “the court does not make credibility  
27 determinations or weigh conflicting evidence.” *Soremekun*, 509 F.3d at 984. Instead, “[t]he  
28 evidence of the [nonmoving party] is to be believed, and all justifiable inferences are to be drawn

1 in [its] favor.” *Anderson*, 477 U.S. at 255. Inferences, however, are not drawn out of the air; the  
 2 nonmoving party must produce a factual predicate from which the inference may reasonably be  
 3 drawn. *See Richards v. Nielsen Freight Lines*, 602 F.Supp. 1224, 1244-45 (E.D. Cal. 1985),  
 4 *aff’d*, 810 F.2d 898 (9th Cir. 1987).

#### 5 **IV. DISCUSSION**

6 Plaintiffs’ First Amended Complaint alleges: a Section 1983 excessive force claim against  
 7 Defendant Crain predicated on a violation of Mr. Woodral’s rights under the Fourth Amendment;  
 8 Section 1983 *Monell* liability against Defendant Stanislaus County; a Bane Act claim against  
 9 Defendant Crain under California Civil Code § 52.1; Battery against all Defendants under  
 10 California Penal Code § 242; and Negligence against all Defendants under California common  
 11 law. (Doc. 18.) Defendants have challenged each of these claims in their motion for summary  
 12 judgment, or in the alternative, partial summary judgment. (Doc. 31-1.) Plaintiffs have in turn  
 13 sought summary adjudication against Defendants as to the liability portion of their excessive  
 14 force, negligence and *Monell* claims. (Doc. 32.)

##### 15 **A. Section 1983 Excessive Force Claim Against Defendant Crain**

16 Plaintiffs plead a Section 1983 excessive force claim against Defendant Crain arising from  
 17 the injuries K9 Colt inflicted on Mr. Woodral. (Doc. 18; UF ¶ 10.) Specifically, Plaintiffs argue  
 18 that excessive force was used when Defendant Crain did not order K9 Colt to release the bite after  
 19 Mr. Woodral was subdued by K9 Colt and had complied with Defendant Crain’s instructions.<sup>4</sup>  
 20 (PSSUF ¶¶ 11-19.) Defendants seek summary judgment on Plaintiffs’ excessive force claim,  
 21 arguing that the force used was objectively reasonable and that Defendant Crain is entitled to  
 22 qualified immunity. (Doc. 31-2.) Plaintiffs seek summary adjudication as to the liability portion  
 23 of their excessive force claims. (Doc. 32.)

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25 <sup>4</sup> The Court construes Plaintiffs’ excessive force challenge as relating to the “continued biting” of  
 26 Mr. Woodral, as discussed *infra*. Based on Plaintiffs’ evidence and briefing, the excessive force  
 27 claim is not regarding the initial deployment of the dog or the bite until Defendant Crain reached  
 28 Mr. Woodral and the dog, but instead the excessive force claim arises from the prolonged bite  
 between when Defendant Crain reached Mr. Woodral and when Defendant Crain ordered the dog  
 to release the bite.

## 1. Reasonable Force Analysis

The Fourth Amendment permits law enforcement to use objectively reasonable force. *Graham v. Connor*, 490 U.S. 386, 396–97 (1989). Such an inquiry requires the Court to “consider the totality of the circumstances.” *Gonzalez v. City of Anaheim*, 747 F.3d 789, 794 (9th Cir. 2014) (en banc) (citation omitted).

The Ninth Circuit has noted that, in “assessing the objective reasonableness of a particular use of force, we consider: (1) ‘the severity of the intrusion on the individual's Fourth Amendment rights by evaluating the type and amount of force inflicted,’ (2) ‘the government’s interest in the use of force,’ and (3) the balance between ‘the gravity of the intrusion on the individual’ and ‘the government's need for that intrusion.’” *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (quoting *Glenn v. Washington County*, 673 F.3d 864, 871 (9th Cir. 2011)).

The Ninth Circuit emphasized that the “factors bearing on the reasonableness of a particular application of force, are not to be considered in a vacuum but only in relation to the amount of force used to effect a particular seizure.” *Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994). Further, the Ninth Circuit has cautioned that, “[b]ecause such balancing nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that summary judgment or judgment as a matter of law in excessive force cases should be granted sparingly.” *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002).

The Ninth Circuit has held that use of a police dog may constitute excessive force depending on the factual circumstances. *Lowry*, 858 F.3d at 1256; see *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir. 2005), disapproved of on other grounds by *Lemos v. Cnty. of Sonoma*, 40 F.4th 1002 (9th Cir. 2022); *Chew*, 27 F.3d at 1441 (“the district court's decision to take the [use of a K9] excessive force question away from the jury conflicts with circuit law.”); *Miller*, 340 F.3d at 963–68 (“Even if [the dog] avoids a suspect's head and neck, and bites a suspect's arm or leg, as the dog is trained to do, his bite may pose some modest threat to a suspect's life.”); *Hernandez v. Town of Gilbert*, 989 F.3d 739, 744 (9th Cir. 2021) (“We held that the law was clearly established that the use of the police dog was subject to excessive force analysis.”)

Defendants primarily argue that only reasonable force was used in the deployment of K9

Colt to arrest Mr. Woodral as shown by the balance of factors. (Doc. 31-1 at 15-22.) Plaintiffs instead argue the balance of factors weighs in favor of finding excessive force was used against Mr. Woodral. (Doc. 32 at 10-14, Doc. 38 at 12-13.)

**a. Severity of Intrusion**

Defendants first claim that there was only a moderate intrusion during Mr. Woodral's apprehension by K9 Colt, while Plaintiffs argue that the intrusion was severe. (Doc. 31-1 at 15-18; Doc. 32 at 10-11.) The Ninth Circuit has emphasized that "characterizing the quantum of force with regard to the use of a police dog depends on the specific factual circumstances." *Lowry*, 858 F.3d at 1256. In examining the quantum of force used, the "nature and degree of physical contact are relevant to this analysis... as are the 'risk of harm and the actual harm experienced.'" *Williamson v. City of Nat'l City*, 23 F.4th 1146, 1152 (9th Cir. 2022) (quoting *Forrester v. City of San Diego*, 25 F.3d 804, 807 (9th Cir. 1994) and *Nelson v. City of Davis*, 685 F.3d 867, 879 (9th Cir. 2012).)

The Ninth Circuit has held that the use of the bite-and-hold technique by a police canine constitutes a significant degree of force. *See Miller*, 340 F.3d at 964. The duration of the dog bite is a factor in considering whether the force used was reasonable or excessive. *Id.* (upholding District Court determination that the force used was "considerable" and "exacerbated by the [45-60 second] duration of the bite" when a deputy allowed a police dog to bite and hold the plaintiff for an "unusually long time period"); *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998) (holding the "excessive duration" of a bite "could constitute excessive force that would be a constitutional violation" where the police dog bit the plaintiff for approximately ten to fifteen seconds); *Lowry*, 858 F.3d at 1253, 1257 (the use of force was not severe, but emphasized that the encounter between the plaintiff and police dog was "so brief that [the officer] did not even know if contact had occurred.").

The Ninth Circuit has also considered the level of injury in determining the degree of force used. *See Chew*, 27 F.3d at 1441 (finding force used was severe when a police dog bit the plaintiff three times before achieving an effective hold, dragged the plaintiff between four and ten feet, caused severe lacerations, and "nearly severed" the plaintiff's arm); *Miller*, 340 F.2d at 964

1 (finding intrusion was serious where the plaintiff's skin was torn in four places, the plaintiff's  
2 muscles were shredded, and the injury went as deep as the bone).

3 On the duration of the bite, a reasonable jury could find the length of K9 Colt's continued  
4 bite, after Mr. Woodral was subdued by K9 Colt and had complied with Defendant Crain's  
5 instructions, to be excessive. The parties appear to agree on some of the basic circumstances  
6 surrounding the bite: Mr. Woodral had complied with Defendant Crain's instructions, moved onto  
7 his stomach, and yelled for Defendant Crain to get the dog off of him while K9 Colt continued to  
8 bite Mr. Woodral. (UF ¶ 11, PSSUF ¶¶14-17, DSSUF ¶¶ 22-23.) Once Mr. Woodral complied  
9 and said he was not going to run, Defendant Crain held the dog for a time while the dog  
10 continued to bite Mr. Woodral. (PSSUF ¶ 18, DSSUF ¶ 26.) K9 Colt continued to bite Mr.  
11 Woodral for approximately 15-18 seconds. (PSSUF ¶ 18; DSSUF ¶ 27.) Once ordered to release  
12 his bite, K9 Colt released Mr. Woodral. (UF ¶ 13.)

13 A dispute of material fact remains regarding how long K9 Colt continued to bite Mr.  
14 Woodral's arm between when Defendant Crain arrived at the apprehension location, with Mr.  
15 Woodral on the ground and complying, and when the second deputy arrived. Defendants contend  
16 that after Defendant Crain arrived at the apprehension location, Defendant Crain "maintained  
17 control of Colt by his collar for up to 15 seconds until [Defendant] Crain determined it was safe  
18 to command Colt to release the bite... once Deputy Prasad was in close proximity." (DSSUF ¶  
19 27.) Plaintiffs contend that "Defendant Crain straddled the K9 unit and picked it up by its vest  
20 while it continued biting [Mr. Woodral]'s arm; the deputy held the dog like this for approximately  
21 18 seconds before the it [sic] released its bite." (PSSUF ¶ 18.) Thus, the parties dispute the  
22 duration of this continued bite.

23 Depending on the duration of the continued bite, a reasonably jury could conclude that the  
24 duration of time, between when Defendant Crain arrived at the apprehension location and K9  
25 Colt's release of the bite once Deputy Prasad arrived, was excessive.

26 This duration of force may be comparable to the officers permitting the ten to fifteen  
27 second bite in *Watkins*. *Watkins*, 145 F.3d at 1090. In *Watkins*, the court agreed with the plaintiff  
28 there that the duration and extent of force applied in effecting arrest after the officers catches up

1 with a fleeing subject may amount to an unconstitutional application of force. And the duration  
2 of K9 Colt's continued bite here likely exceeds that of the dog bite in *Lowry* that was "so brief  
3 that [the officer] did not even know if contact had occurred." *Lowry*, 858 F.3d at 1253, 1257.  
4 Although the continued bite here is not as lengthy as the "unusually long time period" of 45 to 60  
5 seconds in *Miller*, the Ninth Circuit there noted that "[o]rdinarily, the dog bites a suspect for only  
6 about four seconds before [the officer] orders the dog to release." *Miller*, 340 F.3d at 961.  
7 Furthermore, the police dog in *Miller* was called off as soon as the deputy could see the dog had  
8 caught the plaintiff and that the plaintiff was unarmed. *Id.* Here, Defendant Crain arrived at Mr.  
9 Woodral's location in the orchard, then kept the dog on Mr. Woodral for some duration of time  
10 until Deputy Prasad joined them. (DSSUF ¶¶ 27, 39.)

11 In addition to the length of the bite, Defendants offer no rationale why Defendant Crain  
12 was incapable of placing handcuffs on Mr. Woodral once Defendant Crain arrived at the  
13 apprehension location. There is no explanation why Defendant Crain had to wait for Deputy  
14 Prasad to put handcuffs on Mr. Woodral rather than Defendant Crain handcuffing Mr. Woodral  
15 himself. These factual circumstances might lead a reasonable jury to conclude that Defendant  
16 Crain waiting for Deputy Prasad prolonged the force more than reasonably necessary. A  
17 reasonable jury could therefore find the duration of K9 Colt's continued bite weighs in favor of  
18 finding a severe intrusion.

19 On the issue of injury, Mr. Woodral sustained injuries that required surgery, and those  
20 injuries have had long-term effects. Plaintiffs note that Mr. Woodral's "thumb was left with  
21 ligaments hanging out of it after the dog attack." (PSSUF ¶ 29.) After his arrest, Mr. Woodral  
22 was treated by paramedics and admitted to the hospital, where surgery was performed on his right  
23 thumb and ring finger. (UF ¶ 17.) Following treatment, Mr. Woodral did not have feeling in his  
24 thumb and could not bend it. (PSSUF ¶ 29.) Mr. Woodral also struggled to write his name and  
25 could not make a fist or pick up more than four pounds with his right hand. (PSSUF ¶ 30.)

26 Defendants note that Mr. Woodral had similar injuries but contest the severity of those  
27 injuries. Defendants state that Mr. Woodral sustained moderate injuries that included an open  
28 fracture with an open wound on the right thumb proximal phalanx and a closed fracture of the

1 ring finger middle phalanx. (DSSUF ¶ 40.) The tendons, nerve, and arteries of the thumb “were  
2 all intact” according to Mr. Woodral’s surgeon, who expected Mr. Woodral to have good  
3 functioning of his right hand. (DSSUF ¶¶ 42-43.) Defendants further suggest that Mr. Woodral’s  
4 injuries were exacerbated by Mr. Woodral’s noncompliance with the postoperative care plan.  
5 (DSSUF ¶¶ 43-45.)

6         Given the disputed severity, nature, and long-term impact of Mr. Woodral’s injuries, a  
7 reasonable jury could find that his injuries were akin to those in cases where the Ninth Circuit  
8 found severe intrusion. *See Miller*, 340 F.2d at 961 (the plaintiff “underwent surgery by an  
9 orthopedic surgeon and spent several days in the hospital” [and] “continues to suffer lingering  
10 effects from the dog bite.”); *Chew*, 27 F.3d at 1441 (the plaintiff asserted that his arm was “nearly  
11 severed” and the officer “acknowledged that the injuries to [the plaintiff’s] side and arm were  
12 ‘pretty severe’ and that ‘[t]here was some serious lacerations.’”); *Watkins*, 145 F.3d at 1090  
13 (officers called an ambulance and the examining paramedic noted “multiple lacerations and  
14 punctures to [the plaintiff’s] left foot” and “a jagged tearing of the skin and a puncture deep  
15 enough to allow him to see [the plaintiff’s] tendons.”) Like the plaintiffs in those cases, Mr.  
16 Woodral required surgery and had open wounds. (UF ¶ 17, DSSUF ¶ 40.) In addition, Plaintiffs  
17 contend that Mr. Woodral suffered lingering effects that affected his use of his thumb and hand.  
18 (PSSUF ¶ 29-30.) This could lead a reasonable jury to conclude that Mr. Woodral’s injuries were  
19 severe.

20         Alternately, a reasonable jury could find that Mr. Woodral’s injuries and intrusions were  
21 more moderate. Following Defendants’ evidence that the tendons, nerve, and arteries of Mr.  
22 Woodral’s thumb were all intact, a reasonable juror could view the injuries as more similar to  
23 those of the plaintiff in *Lowry*, who had a minor bite to the lip and only required three stitches.  
24 *Lowry*, 858 F.3d at 1254; (DSSUF ¶¶ 42.) Given the material disputes regarding the severity of  
25 Mr. Woodral’s injuries and the duration of K9 Colt’s continued bite, a reasonable jury could find  
26 that there was a severe intrusion.

27         In their motion, Defendants argue that the force and intrusion here was comparable to  
28 cases where the Ninth Circuit found that objectively reasonable force was used, such as *Miller v.*

1 *Clark County and Hernandez v. Town of Gilbert*. (Doc. 31-1 at 16.) However, this comparison is  
 2 inapposite. In *Miller*, the Ninth Circuit concluded that there had actually been a “serious”  
 3 intrusion given the “unusually long” bite of 45 to 60 seconds. *Miller*, 340 F.3d at 960-61, 964.  
 4 This conclusion was bolstered by the potential injury from a prolonged bite even before an officer  
 5 had reached the plaintiff. *Id.* In the instant case, however, K9 Colt continued to bite Mr.  
 6 Woodral for some length of time after Defendant Crain reached a compliant Mr. Woodral.  
 7 (PSSUF ¶¶ 14-19; DSSUF ¶ 27.)

8 In *Hernandez*, the Ninth Circuit noted, “[o]ur caselaw is clear that an officer cannot direct  
 9 a police dog to continue biting a suspect who has fully surrendered and is under the officer’s  
 10 control” but found that the officer was entitled to qualified immunity because the plaintiff “did  
 11 not surrender at any point during the encounter; rather, the officers had to physically drag him  
 12 from his car after the dog bite.” *Id.* at 745-46. The Ninth Circuit made clear that the plaintiff had  
 13 not surrendered even after the police dog bit the plaintiff’s arm for approximately 50 seconds. *Id.*  
 14 at 743. Officers ultimately had to pull the plaintiff from the car when he still refused to surrender,  
 15 approximately twenty seconds after the police dog had stopped biting him. *Id.*

16 Unlike the plaintiff in *Hernandez* who had not surrendered, Mr. Woodral lay on the  
 17 ground and was complying with officer instructions while K9 Colt continued to bite him.  
 18 (PSSUF ¶¶ 14-19; DSSUF ¶ 27.) Defendants’ attempt to compare the duration or quantum of  
 19 force in pre-compliance bites to a post-compliance bite does not support a finding of moderate  
 20 intrusion here. A reasonable jury could still find that the intrusion was severe. A reasonable jury  
 21 could therefore similarly conclude that the duration and injury caused a serious intrusion on Mr.  
 22 Woodral’s Fourth Amendment rights.

### 23 **b. Government Interest**

24 Courts assess the strength of the government’s interest in the use of force by evaluating:  
 25 “(1) the severity of the crime at issue[;] (2) whether the suspect posed an immediate threat to the  
 26 safety of the officers or others[;] and (3) whether the suspect was actively resisting arrest or  
 27 attempting to evade arrest by flight.” *Miller*, 340 F.3d at 964 (citing *Graham*, 490 U.S. at 396).  
 28 “Other relevant factors [to the strength of the government’s interest] include the availability of

1 less intrusive alternatives to the force employed, whether proper warnings were given and  
 2 whether it should have been apparent to officers that the person they used force against was  
 3 emotionally disturbed.” *Glenn*, 673 F.3d at 872. However, “[w]hen evaluating the government’s  
 4 interest, the most important factor is whether the person posed an immediate threat to the safety  
 5 of the officer or another.” *Tan Lam v. City of Los Banos*, 976 F.3d 986, 998 (9th Cir. 2020).

#### 6 **i. Severity of the Crime at Issue**

7 Defendants contend that Mr. Woodral’s crimes were severe. (Doc. 31-1 at 18.) They  
 8 emphasize that Mr. Woodral was on Post Release Community Supervision and was out on bail  
 9 for an investigation in other theft cases. (UF ¶¶ 1-2.) At the time, Mr. Woodral was also a  
 10 suspect in an investigation of a stolen fuel trailer. (UF ¶ 2.) Defendants further point to, and  
 11 Plaintiffs do not dispute, evidence that Mr. Woodral was booked on felony charges including  
 12 vehicle theft, receiving a known stolen vehicle, conspiracy, and a violation of Post Release  
 13 Community Supervision. (DSSUF ¶¶ 49-50, Doc. 38-1, Plaintiffs’ Response to Defendants’  
 14 Separate Statement of Material Facts, ¶¶ 49-50.) Plaintiffs also do not dispute that Mr. Woodral  
 15 entered a plea of no contest to carjacking, which is classified as a “violent felony” under  
 16 California Penal Code 667.5(c)(17). (DSSUF ¶ 50; Doc. 38-1 ¶ 50.) Plaintiffs instead argue that  
 17 the crime was not severe, as Mr. Woodral’s suspected possession of a stolen fuel trailer was a  
 18 nonviolent offense and Mr. Woodral was unarmed. (UF ¶¶ 3-4; Doc. 31-5, Crain Decl. ¶ 23.)

19 The Ninth Circuit has addressed suspicion of felonies in the context of severity of crimes  
 20 factor. In *Chew*, where the plaintiff had three outstanding felony warrants for his arrest, the Ninth  
 21 Circuit emphasized that “the record does not reveal the type of felony for which [plaintiff] Chew  
 22 was wanted” and found that the “existence of three warrants for undetermined crimes—for which  
 23 Chew had not been tried or convicted—is thus not strong justification for the use of dangerous  
 24 force.” *Chew*, 27 F.3d at 1442 (citing *Tennessee v. Garner*, 471 U.S. 1, 14 (1985) (“the  
 25 assumption that a “felon” is more dangerous than a misdemeanor [is] untenable.”)). Examining  
 26 the totality of the circumstances, the Ninth Circuit noted that the “significance of the warrants is  
 27 further diminished by the facts that Chew was completely surrounded by the police, and that the  
 28 prospects for his imminent capture were far greater than are those of the many fleeing suspects

1 who are fleeter than the police officers chasing them.” *Id.* at 1443.

2 The Ninth Circuit further developed its approach to the severity of the crime factor in  
3 *Miller*, where the plaintiff was wanted for both a misdemeanor traffic infraction and a felony of  
4 attempting to flee from police by driving a car with a wanton or willful disregard for the lives of  
5 others. *Miller*, 340 F.3d at 960, 964. There, the Ninth Circuit noted that the government’s  
6 interest is “even stronger when the criminal is...suspected of a felony, which is by definition a  
7 crime deemed serious by the state” and concluded that this factor “strongly favors the  
8 government.” *Id.* In a footnote, the Ninth Circuit further explained: “Even if [the plaintiff] were  
9 wanted only for a nondangerous felony, we still would deem it significant—though of limited  
10 significance—that [the plaintiff] was a felony suspect.” *Id.* at 965, n.10 (citing *Chew*, 27 F.3d  
11 1442-4); *see also United States v. Hensley*, 469 U.S. 221, 229 (noting the “strong government  
12 interest in solving crimes and bringing offenders to justice” in a case involving *Terry* stops).

13 The Court finds that this factor weighs in favor of governmental interest in the intrusion.  
14 Mr. Woodral was a suspect in an investigation of a stolen fuel trailer. (UF ¶ 2.) As in *Miller*, Mr.  
15 Woodral was fleeing and being pursued in relation to vehicle theft and charged with felonies  
16 including vehicle theft, receiving a known stolen vehicle, conspiracy, and a violation of Post  
17 Release Community Supervision. (DSSUF ¶ 49, Doc. 38-1, ¶ 49.) Unlike in *Chew*, where the  
18 nature of the plaintiff’s felonies were unclear, the record here shows that Mr. Woodral was  
19 booked on and entered a plea of no contest for vehicle theft, which California categorizes as a  
20 violent felony. (DSSUF ¶¶ 49-50, Doc. 38-1, ¶¶ 49-50.) Following the Ninth Circuit’s guidance  
21 in assigning greater significance to violent felonies, the severity of the crime factor thus weighs in  
22 favor of a finding that the government had an interest in using force.

## 23 **ii. Immediate Threat to Safety of Officer or Another**

24 The Ninth Circuit has deemed the immediate threat to safety of an officer or another the  
25 “most important” factor. *Tan Lam*, 976 F.3d at 998. In cases where suspects are lying on the  
26 ground or complying with officer instructions, courts have found that reasonable juries could  
27 conclude that plaintiffs did not pose a threat to officers or others. In *Smith v. City of Hemet*,  
28 where a police dog was used, the plaintiff initially refused to comply with officer instructions to

1 remove his hands from his pajama pockets, then complied before force was used. *Smith*, 394  
 2 F.3d at 702, disapproved of on other grounds by *Lemos v. Cnty. of Sonoma*, 40 F.4th 1002 (9th  
 3 Cir. 2022). In that case, where the plaintiff “continued to shield one arm from the officers and  
 4 their dog and plaintiff shouted expletives at the officers” until both of his arms were handcuffed,  
 5 the Ninth Circuit found that the record showed the officers had no reason to believe that the  
 6 plaintiff “possessed any weapon or posed any immediate threat to the safety of the officers or  
 7 others.” *Id.* The Ninth Circuit concluded that a rational jury could find that the plaintiff “did not,  
 8 at any time, pose a danger to the officers or others.” *Id.*

9 In a more recent case involving a police dog, a District Court examined whether the  
 10 plaintiff posed a threat where he “was on his stomach with his arms outstretched as the [police  
 11 dog] continued to bite him for at least twenty seconds.” *Rosenbaum v. Dunn*, No. 20-CV-04777-  
 12 NC, 2022 WL 17491969, at \*6 (N.D. Cal. Nov. 28, 2022). The plaintiff there did not issue “any  
 13 specific threats to the officers or actively resist[] the officers once the [police dog] was engaged.”  
 14 Prior to releasing the dog, the officers were made aware by a victim of the plaintiff’s recent  
 15 domestic assault, intoxication status, martial arts training, potential firearm ownership, and  
 16 previous altercations with the police. *Id.* at \*1. The court there found that, “[a]lthough the  
 17 circumstances preceding the bite led [the officer] to believe [the plaintiff] could pose an imminent  
 18 deadly threat, considering the evidence in the light most favorable to Plaintiff, a rational jury  
 19 could very well find that he did not pose a danger to the officers during the duration of the bite.”  
 20 *Id.* at \*6; *see also Lawrence v. Las Vegas Metro. Police Dep’t*, 451 F. Supp. 3d 1154, 1171 (D.  
 21 Nev. 2020) (where the plaintiff was “lying on the ground, severely bleeding and not moving, a  
 22 reasonable juror could certainly conclude that [the plaintiff] did not pose an immediate threat to  
 23 the officers or to other people. Accordingly, the government’s interest in the use of force would  
 24 ebb to its lowest point, and the use of the K-9 could constitute excessive force.”); *Drummond ex*  
 25 *rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1057 (9th Cir. 2003) (noting that while the  
 26 individual may have represented a threat before he was handcuffed, a reasonable jury could find  
 27 he posed a minimal threat after he was knocked to the ground and handcuffed).

28 In other cases involving a K9 unit, the Ninth Circuit has found that the plaintiff posed a

1 threat. In *Miller*, the Ninth Circuit noted that the plaintiff being pursued “possessed a large knife  
 2 moments earlier” and the officer involved knew “there was a chance [the plaintiff] was not ‘law  
 3 enforcement friendly’ ... [and] had mental health problems” based upon information from other  
 4 officers. *Miller*, 340 F.3d at 965. The court also emphasized that the plaintiff was familiar with  
 5 the area and, “[p]erhaps more importantly, [the officer] knew that if [the plaintiff]’s defiant and  
 6 evasive tendencies turned violent, and [plaintiff] staged an ambush, [the plaintiff] would possess a  
 7 strategic advantage over the deputies.” *Id.* Given these circumstances, the Ninth Circuit found  
 8 that the “[s]econd... factor weighs heavily in the government’s favor.” *Id.* The Ninth Circuit  
 9 followed the reasoning of *Miller* in *Lowry*, where officers were investigating a burglary in a dark  
 10 commercial building where the plaintiff appeared to be hiding. *Lowry*, 858 F.3d at 1258. There,  
 11 the Ninth Circuit noted that, “when confronted with signs of a burglary, investigating officers are  
 12 entitled to protect their own safety” and found that the immediate threat factor weighed in favor  
 13 of the defendants. *Id.* (citing *Sandoval*, 756 F.3d at 1163.)

14 Defendants argue here that Mr. Woodral posed a threat to officers’ safety, as Defendant  
 15 Crain did not know if Mr. Woodral was armed and Mr. Woodral’s criminal history included  
 16 arrests for thefts, drugs, and domestic violence. (UF ¶¶ 1-4; DSSUF ¶¶ 4-5, 24-25.) Plaintiffs in  
 17 turn suggest that Mr. Woodral offered little threat as: Mr. Woodral complied with Defendant  
 18 Crain’s instructions and lay on the ground where he could not move, Defendant Crain lacked  
 19 information that Mr. Woodral was armed, Defendant Crain lacked information that Mr.  
 20 Woodral’s criminal history involved any assaults on law enforcement or firearms offenses, Mr.  
 21 Woodral did not have weapons on his person when he was searched, and the arrest took place in a  
 22 remote orchard without nearby members of the public. (UF ¶¶ 1-4; PSSUF ¶¶ 3, 6-7, 12-19;  
 23 DSSUF ¶ 27; Doc. 31-5, Crain Decl. ¶ 23.)

24 Considering both parties’ diverging views of the evidence for this “most important”  
 25 factor, a reasonable jury could find that Mr. Woodral did not pose a threat. Mr. Woodral initially  
 26 fled from officers, but at the time of the prolonged dog bite, he already lay on the ground and had  
 27 complied with Defendant Crain’s instructions to get on his stomach. (UF ¶¶ 6-9, 12.) Once on  
 28 the ground, Mr. Woodral does not appear to have issued any verbal threats to the officers –

1 instead, the evidence suggests that Mr. Woodral yelled out to Defendant Crain, “get this dog off  
2 of me” and may have told Defendant Crain that he was not trying to run anymore. (DSSUF ¶ 22,  
3 PSSUF ¶ 16.) Following Defendant Crain’s arrival, K9 Colt continued biting Mr. Woodral while  
4 Defendant Crain held K9 Colt. (PSSUF ¶¶ 14-19; DSSUF ¶ 27.)

5       Considering the evidence in light most favorable to the Plaintiffs, a reasonable jury may  
6 conclude that Mr. Woodral did not pose an immediate threat to officers or others. Mr. Woodral  
7 lay on the ground and complied with officer instructions, appearing to have offered less of a  
8 threat than the plaintiff in *Smith*, where the Ninth Circuit found that the plaintiff did not pose “any  
9 immediate threat to the safety of the officers or others” despite shouting expletives and shielding  
10 his arms while the officers attempted to handcuff him. *Smith*, 394 F.3d at 702. Like *Rosenbaum*,  
11 Mr. Woodral offered no further resistance or verbal threats once he was on the ground, only  
12 requesting Defendant Crain get the dog off of him. *Rosenbaum* 2022 WL 17491969, at \*1, 6.  
13 Accordingly, a reasonable jury here could conclude that Mr. Woodral did not pose a threat to  
14 officers or others.

### 15                               iii.       Resistance or Evasion of Arrest

16       On the resistance of arrest factor, Defendants argue that Mr. Woodral was actively  
17 resisting arrest as he drove away from pursuing police vehicles, ran from Defendant Crain,  
18 continued running after Defendant Crain made a K9 announcement, and never declared he was  
19 unarmed despite his physical compliance of lying on his stomach. (DSSUF ¶¶ 14-16, 18-22, 24.)  
20 Plaintiffs instead argue that when the alleged excessive force was used, Mr. Woodral had already  
21 stopped running, lay on the ground, and complied with Defendant Crain’s commands while K9  
22 Colt continued biting him. (PSSUF ¶¶ 14-19, 25.)

23       In light of both parties evidence, it cannot be disputed that Mr. Woodral initially resisted  
24 arrest and fled from pursuing officers. (UF ¶ 6.) It is also undisputed that once caught, Mr.  
25 Woodral complied with Defendant Crain’s instructions to get on his stomach. (UF ¶ 12.) As  
26 discussed, some amount of time passed between when Mr. Woodral’s active resistance ended and  
27 when K9 Colt released the bite. (PSSUF ¶¶ 14-19, DDUF ¶ 27.) While the Court is mindful not  
28 to judge with the 20/20 vision of hindsight, the amount of time that elapsed between Mr. Woodral

1 actively resisting and the bite ending is a material consideration. See *Bryan v. MacPherson*, 630  
 2 F.3d 805, 826 (9th Cir. 2010) (noting the totality of the circumstances is to be examined).  
 3 Accordingly, there is a genuine dispute regarding this active resistance or evasion factor.

4 On this issue, Defendants argue that Mr. Woodral's actions were similar to the *Hernandez*  
 5 plaintiff's noncompliance with officers. (Doc. 31-1 at 20-21.) There, officers told the plaintiff to  
 6 exit a vehicle, and in response the plaintiff yelled "alright" but did not exit the car or put his arms  
 7 up. *Hernandez*, 989 F.3d at 747. Instead, the plaintiff continued to resist being removed from the  
 8 car even after the police dog bit the plaintiff's arm for approximately 50 seconds. *Id.* at 743.  
 9 There, it took another twenty seconds after the dog bite ended for officers to drag the plaintiff  
 10 from his car. *Id.* at 745-46. The Ninth Circuit found that though "based on [plaintiff]'s  
 11 continuing resistance here as shown on the video recording, a reasonable officer in the position of  
 12 [the officer involved] would not view [plaintiff's] conduct as an act of surrender." *Id.* The Ninth  
 13 Circuit also noted that the plaintiff's briefing made "no attempt to discuss his resistance after the  
 14 dog bite." *Id.*

15 This case is distinguishable from the instant case, where the parties have submitted the  
 16 undisputed fact that Defendant Crain ordered Mr. Woodral to get on his stomach and Mr.  
 17 Woodral complied. (UF ¶ 12.) Plaintiffs have additionally submitted evidence that Mr. Woodral  
 18 begged Defendant Crain to get the dog off of him and told Defendant Crain that he was not trying  
 19 to run anymore. (PSSUF ¶¶ 16-17.) Unlike the plaintiff in *Hernandez* who continued resisting  
 20 even after the police dog stopped biting him, Mr. Woodral complied with Defendant Crain's  
 21 instructions for some time while K9 Colt's bite continued. Thus, Defendants' argument does not  
 22 support a finding of resistance or evasion and a genuine dispute remains regarding this factor.

### 23 **c. Balancing**

24 As discussed, there are genuine disputes of material fact concerning at least the severity of  
 25 the intrusion element, the threat to safety factor, and the active resistance factor. Disputed factual  
 26 issues remain as to the length of time that K9 Colt's bite continued between Mr. Woodral's  
 27 compliance with officer instruction, Defendant Crain's arrival, and Deputy Prasad's handcuffing  
 28 of Mr. Woodral. (PSSUF ¶¶ 14-19, DDUF ¶ 27.) Thus, a reasonable fact finder could disagree

1 as to whether Defendant Crain used objectively reasonable force. Therefore, the Court finds there  
2 is a genuine dispute of fact as to whether Defendant Crain used unreasonable force.

## 3 **2. Qualified Immunity**

4 Defendants contend that Defendant Crain is entitled to qualified immunity on Plaintiffs'  
5 claims of excessive force as Defendant Crain did not violate Mr. Woodral's constitutional rights  
6 and a right is not clearly established. (Doc. 31-1 at 17-19.) Plaintiffs in turn argue that there was  
7 a constitutional violation and a clearly established right. (Doc. 38 at 13-16.)

8 The doctrine of qualified immunity shields individual officers "from liability for civil  
9 damages insofar as their conduct [did] not violate clearly established ... constitutional rights of  
10 which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)  
11 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The court applies a two-prong  
12 analysis in qualified immunity cases, "under which summary judgment is improper if, resolving  
13 all disputes of fact and credibility in favor of the party asserting the injury, (1) the facts adduced  
14 show that the officer's conduct violated a constitutional right, and (2) that right was 'clearly  
15 established' at the time of the violation." *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 788 (9th  
16 Cir. 2016) (en banc).

### 17 **a. Violation of a Constitutional Right**

18 As to the constitutional right violation, the Court has found that material issues of fact  
19 exist with respect to the objective reasonableness of Defendant Crain's use of force during the  
20 seizure and arrest of Mr. Woodral. The Court recognizes that the presence of disputed facts,  
21 alone, does not provide a sufficient basis for denying summary judgment on the issue of qualified  
22 immunity. *See Saucier v. Katz*, 533 U.S. 194, 200 (2001). However, "unresolved issues of fact  
23 are also material to a proper determination of the reasonableness of the officers' belief in the  
24 legality of their actions." *Espinosa*, 598 F.3d at 532.

### 25 **b. Clearly Established Constitutional Right**

26 On whether the right was clearly established, the Court must determine whether the  
27 constitutional right is clearly established such that a reasonable officer would have known that the  
28 challenged conduct was unlawful. *Pearson*, 555 U.S. at 231. To do so, courts survey the judicial

1 landscape to determine if the right was clearly established in the caselaw prior to the date of the  
2 incident. *Id.* at 244. A clearly established law is not defined “at a high level of generality.”  
3 *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). Instead, the law should be sufficiently  
4 particularized to “demonstrate whether the violative nature of particular conduct is clearly  
5 established.” *Id.* However, a finding of clearly established law does not require a factually  
6 identical case, but rather “existing precedent must have placed the statutory or constitutional  
7 question beyond debate.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (quoting *Ashcroft*, 563 U.S. at  
8 741).

9 In this instance, the Fourth Amendment right to be free from unreasonable seizure and the  
10 use of excessive force is well defined. The contours of the right as related to the use of a police  
11 dog have been clearly established in the Ninth Circuit since at least 1994. *See Mendoza v. Block*,  
12 27 F.3d 1357, 1362 (9th Cir. 1994); *Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994); *Watkins*,  
13 145 F.3d at 1093 (9th Cir. 1998). In *Mendoza*, officers searched for the plaintiff for several hours  
14 before releasing a police dog. *Mendoza*, 27 F.3d at 1358. The dog then found the plaintiff and  
15 dragged him from where he hid. *Id.* While the plaintiff was “spread-eagle” on the ground and  
16 handcuffed, the dog switched its bite to the other side and injured him again. *Id.* When the  
17 plaintiff begged officers to remove the dog, they told him to “shut [his]... mouth.” *Id.* While the  
18 Ninth Circuit noted that there were then “few cases in which the appropriate use of police dogs is  
19 addressed...” “[t]his does not mean, however, that there was no clearly established law that  
20 would indicate to the deputies that a constitutional right might be violated when using a dog  
21 during an arrest.” *Id.* at 1361-62. The Ninth Circuit ultimately found that “no particularized case  
22 law is necessary for a deputy to know that excessive force has been used when a deputy sics a  
23 canine on a handcuffed arrestee who has fully surrendered and is completely under control.” *Id.*  
24 at 1362.

25 The Ninth Circuit further developed the law regarding excessive duration of a police dog  
26 bite in *Watkins*. In that case, a K9 unit responded to a silent alarm at a commercial warehouse, a  
27 warning was given, and a police dog was released into the warehouse. *Watkins*, 145 F.3d at 1090.  
28 The dog found and bit the plaintiff. *Id.* An officer arrived at the plaintiff’s location and ordered

1 him to show his hands while the dog continued its bite. *Id.* The plaintiff could not comply, as he  
 2 was recoiling from the dog bites. *Id.* The officer then pulled the plaintiff from his hiding place  
 3 onto the ground, where the dog continued biting the plaintiff until he showed his hands. *Id.*  
 4 There, where the plaintiff claimed the officer “continued to allow [the dog] to bite him even  
 5 though he was obviously helpless and surrounded by police officers with their guns drawn,” the  
 6 Ninth Circuit held that “it was clearly established that excessive duration of the bite and improper  
 7 encouragement of a continuation of the attack by officers could constitute excessive force that  
 8 would be a constitutional violation” and affirmed the district court’s denial of qualified immunity.  
 9 *Id.* at 1090, 1093.

10 The Ninth Circuit continues to recognize that unnecessarily prolonged police dog bites  
 11 can constitute excessive force. *See Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994); *Smith*,  
 12 394 F.3d at 702 (9th Cir. 2005), disapproved on other grounds by *Lemos v. Cnty. of Sonoma*, 40  
 13 F.4th 1002 (9th Cir. 2022); *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017).  
 14 Accordingly, when these events occurred in 2019, it was clearly established that the use of a  
 15 police dog for an unnecessary duration could constitute excessive force.

16 Ultimately, because the determination of qualified immunity requires an inquiry into  
 17 whether reasonable officers could have believed their conduct lawful under the particular  
 18 circumstances, the Court cannot resolve the legal question of qualified immunity until after the  
 19 jury resolves the factual issues surrounding Defendant Crain’s use of force against Mr. Woodral.  
 20 Because the Court cannot resolve the questions regarding reasonable force and qualified  
 21 immunity at this stage, the Court DENIES Defendants’ motion for summary judgment as to  
 22 Plaintiffs’ claim for excessive force.

### 23 **B. Monell Claim Against Defendant Stanislaus County**

24 A municipality, such as Defendant Stanislaus County, cannot be held liable under section  
 25 1983 for the acts of its employees under the theory of respondeat superior. *Bryan Cty. v. Brown*,  
 26 520 U.S. 397, 403 (1997); *Monell v. Dept. of Social Servs. of City of New York*, 436 U.S. 658,  
 27 691 (1978). A *Monell* claim of municipal liability may involve: (1) implementation of official  
 28 policies or established customs that inflict constitutional injury; (2) acts of omission amounting to

1 a policy, custom, or practice of “deliberate indifference” to constitutional rights; or (3) ratification  
 2 of a subordinate’s unconstitutional conduct by a local government official with final policy-  
 3 making authority. *Clouthier v. Cty. of Contra Costa*, 591 F.3d 1232, 1249-50 (9th Cir. 2010),  
 4 overruled in part on other grounds in *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir.  
 5 2016). The Ninth Circuit has explained that, in the context of police dog excessive force cases,  
 6 the plaintiff “must demonstrate first that his seizure by [the dog] was unconstitutional and second  
 7 that the city was responsible for that constitutional wrong.” *Chew*, 27 F.3d at 1439.

### 8 **1. Policy, Custom, or Practice**

9 Plaintiffs contend that they are entitled to summary adjudication based on the Defendant  
 10 Stanislaus County’s purported custom or practice to permit and train officers to allow a police  
 11 dog to stay on a bite even after a suspect complies with officer directions. (Doc. 32 at 14-16,  
 12 Doc. 38 at 21-26.) The Ninth Circuit requires a plaintiff to “‘establish: (1) that he possessed a  
 13 constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this  
 14 policy ‘amounts to deliberate indifference’ to [plaintiff]’s constitutional right; and (4) that the  
 15 policy is the ‘moving force behind the constitutional violation.’” *Boss v. City of Mesa*, 746 F.  
 16 App’x 692, 695 (9th Cir. 2018) (citing *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th  
 17 Cir. 1992)). In the *Monell* context, a “policy” is a “deliberate choice to follow a course of  
 18 action...made from among various alternatives by the official or officials responsible for  
 19 establishing final policy with respect to the subject matter in question.” *Fogel v. Collins*, 531 F.3d  
 20 824, 834 (9th Cir. 2008); *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

21 For the first element of whether Mr. Woodral was deprived of a constitutional right,  
 22 Plaintiffs’ argument is derivative of their excessive force argument. On the second, third, and  
 23 fourth elements regarding Defendant Stanislaus County’s alleged policy, Plaintiffs principally  
 24 support their argument with reference to Defendant Crain’s deposition. (UF ¶ 15, Doc. 31-2 at  
 25 82-83.) (Q. So it was in conformance with your policy and training to continue to allow the dog to  
 26 stay on the bite while you waited for Deputy Prasad to draw closer, correct? A. That is correct.  
 27 Q. You’re trained that -- and you can tell me if I’m wrong. You’re trained this [sic] if a person is  
 28 compliant you are not permitted to continue using force against them, right? A. That’s correct.)

1 Plaintiffs essentially contend that Defendant Crain's practice or custom of permitting the dog to  
2 continue to hold on the bite inflicts a constitutional injury and constitutes the policy of Defendant  
3 Stanislaus County.

4 Defendants dispute Plaintiffs' characterization of a policy based upon citation to the  
5 Canine Program section of the Stanislaus County Sheriff's Department Policy Manual, which  
6 states: "Once the individual has been located and no longer reasonably appears to represent a  
7 threat or risk of escape, the canine should be placed in a down-stay or otherwise secured as soon  
8 as it becomes reasonably practical." (Doc. 31-4, Ex. C to Declaration of Jill Nathan). Defendants  
9 further point to Defendant Crain's belief that his actions fell within this policy and expert Bill C.  
10 Lewis II's opinion that the Stanislaus County Sheriff's Department Canine Program meets  
11 national law enforcement standards. (DSSUF ¶¶ 35, 37, 46-47).

12 While Defendants provide the written section of the Policy Manual, Plaintiffs do not cite  
13 evidence of a formal governmental policy to permit police dogs to hold on a bite after a suspect  
14 complies with officer directions, only pointing to Defendant Crain's actions and statement that he  
15 believed his actions conformed with policy and training. (Doc. 31-2 at 82-83.) Plaintiffs  
16 therefore lack evidence of a formal, deliberate choice made by an official responsible for  
17 establishing final policy. *See Fogel*, 531 F.3d at 834. Accordingly, Plaintiffs have not satisfied  
18 the second, third, and fourth elements required for *Monell* liability on this basis. *Boss*, 746 F.  
19 App'x at 695.

20 Absent a formal governmental policy, Plaintiffs must show a "longstanding practice or  
21 custom which constitutes the standard operating procedure of the local government entity."  
22 *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). The custom must be so "persistent and  
23 widespread" that it constitutes a "permanent and well settled city policy." *Id.* (quoting *Monell*,  
24 436 U.S. at 691). "Liability for improper custom may not be predicated on isolated or sporadic  
25 incidents; it must be founded upon practices of sufficient duration, frequency and consistency that  
26 the conduct has become a traditional method of carrying out policy." *Id.*

27 Beyond this incident, Plaintiffs do not cite any other instances of police dogs being  
28 permitted to hold on a bite after a suspect complies with officer directions. The sole mention of

broader Stanislaus County Sherriff Deputies’ practices comes in Plaintiffs’ First Amended Complaint, where Plaintiffs list different instances of alleged excessive force by the Stanislaus County Sherriff Deputies. (Doc. 18 ¶ 21.) However, a party may not rely on references only to its pleadings to oppose summary judgment. *Celotex*, 477 U.S. at 325. Accordingly, Plaintiffs fail to demonstrate that excessive force by Stanislaus County K9 units is so “persistent and widespread” as to be “permanent and well settled city policy” and have therefore not established *Monell* liability on the basis of policy, custom, or practice.

## 2. Ratification

Plaintiffs also appear to argue that *Monell* liability is appropriate based on the ratification of Defendant Crain’s conduct by officials. (Doc. 18 ¶ 21.) Although unclear, it appears that Plaintiffs are attempting to impose liability Defendant Stanislaus County based on the lack of discipline of Defendant Crain following the incident. Defendants in turn argue that Plaintiffs have not shown ratification by an authorized policymaker. (Doc. 36 at 22-23.)

A *Monell* claim under a theory of ratification exists when “an official with final policymaking authority ratified a subordinate’s unconstitutional decision or action and the basis for it.” *Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992). “[R]atification requires, among other things, knowledge of the alleged constitutional violation.” *Christie v. Iopa*, 176 F.3d 1231, 1239 (9th Cir. 1999). However, “[a] policymaker’s knowledge of an unconstitutional act does not, by itself, constitute ratification.... [I]t is well-settled that a policymaker’s mere refusal to overrule a subordinate’s completed act does not constitute approval.” *Id.* Instead, there must be “evidence of a conscious, affirmative choice.” *Gillette*, 979 F.2d at 1347. Ratification requires “‘something more’ than a single failure to discipline or the fact that a policymaker concluded that the defendant officer’s actions were in keeping with the applicable policies and procedures.” *Soares v. Cty. of Los Angeles*, No. 2:17-CV-00924-RGK-AS, 2018 WL 4896659, at \*3 (C.D. Cal. Apr. 25, 2018).

Here, despite raising the discipline and ratification issue in their First Amended Complaint, Plaintiffs have not produced evidence or provided further discussion to support their argument on ratification. Defendants, in turn, argue that Plaintiffs have not shown Sergeant

LaBarbera, who reviewed and approved Defendant Crain's actions, to be an official with final policymaking authority for Defendant Stanislaus County. (DSSUF ¶ 34.) Given that Plaintiffs have not further discussed ratification in their briefing nor provided evidence of anyone with final policymaking authority for Defendant Stanislaus County having ratified Defendant Crain's actions, *Monell* liability based upon a ratification theory is also unwarranted. *See Celotex*, 477 U.S. at 325; *Koistra v. Cnty. of San Diego*, 310 F. Supp. 3d 1066, 1085 n. 7 (S.D. Cal. 2018) ("Because Plaintiff does not oppose municipal liability based on ratification, pattern or practice, the Court GRANTS Defendants motion for summary judgment on these issues."); *Jenkins v. Cnty. of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (the plaintiff "abandoned her other two claims by not raising them in opposition to the defendant's motion for summary judgment.").

Because Plaintiffs have not provided evidence to support the existence of policy, custom, practice, or ratification of an unnecessarily prolonged police dog bite, the Court GRANTS Defendants' motion for summary judgment as to Plaintiffs' *Monell* claim.

### **C. Plaintiffs' Bane Act Claim Against Defendants Crain and Stanislaus County**

Defendants seek summary judgment on Plaintiffs' Bane Act claim. (Doc. 31-1 at 29 to 30.) The Bane Act provides a right of action to "[a]ny individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of [California] has been interfered with" by another person's "threats, intimidation, or coercion." Cal. Civ. Code § 52.1(b)–(c). To prove a case under the Bane Act, a plaintiff must show "a specific intent to violate the arrestee's right to freedom from unreasonable seizure." *Reese v. Cty. of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018) (citing *Cornell v. City and County of San Francisco*, 17 Cal. App. 4th, 766, 801 (2017)). A "mere intention to use force that the jury ultimately finds unreasonable—that is, general criminal intent—is insufficient." *Reese*, 888 F.3d at 1045 (citing *United States v. Reese*, 2 F.3d 870, 885 (9th Cir. 1993) (internal quotations omitted)). Instead, "the jury must find that the defendants intended not only the force, but its unreasonableness, its character as more than necessary under the circumstances." *Id.* (internal quotations omitted). However, it is not necessary for defendants to have been thinking in "constitutional or legal terms at the time of the incidents, because reckless

disregard for a person’s constitutional rights is evidence of a specific intent to deprive that person of those rights.” *Id.* at 1045.

The inquiry into specific intent focuses on (1) whether “the right at issue [was] clearly delineated and plainly applicable under the circumstances of the case”; and (2) whether the “defendant commit[ed] the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that right.” *Sandoval v. Cty. of Sonoma*, 912 F.3d 509, 520 (9th Cir. 2018), cert. denied sub nom. *Cty. of Sonoma v. Sandoval*, 140 S. Ct. 142 (2019) (internal quotations and citation omitted). If both requirements are met, “specific intent can be shown ‘even if the defendant did not in fact recognize the unlawfulness of his act’ but instead acted in ‘reckless disregard’ of the constitutional right.” *Id.* (citing *Cornell*, 17 Cal. App. 5th at 803).

Plaintiffs’ and Defendants’ arguments regarding summary judgment on Plaintiffs’ Bane Act claim are derivative of their excessive force arguments. (Doc. 31-1 at 29-30; Doc. 38 at 27-29.) Because Plaintiffs’ Bane Act claim is, at a minimum, predicated on the same facts as their excessive force claim, and genuine disputes of fact exist with respect to that claim, summary judgment cannot be granted. Accordingly, the Court DENIES Defendants’ motion for summary judgment on Plaintiffs’ Bane Act claim.

#### **D. Plaintiffs’ Remaining State Law Claims Against Defendants Crain and Stanislaus County**

Defendants seek summary judgment on each of Plaintiffs’ state law claims, including those for battery and negligence. (Doc. 31-1 at 29.)

##### **1. Battery**

Under California law, “claims for assault and battery against peace officers should be resolved under the same liability standard as 42 U.S.C. § 1983 excessive force causes of action.” *Briley v. City of Hermosa Beach*, No. CV05-8127AG(SHX), 2008 WL 4443894, at \*3 (C.D. Cal. Sept. 29, 2008) (citing *Saman v. Robbins*, 173 F.3d 1150, 1156 n. 6 (9th Cir. 1999) (applying the same standard for excessive force for both federal and California law); *Susag v. Lake Forest*, 94 Cal.App.4th 1401, 1415 (2002) (adopting federal § 1983 standards for resolution of state law tort

claims against peace officers)); *Olvera v. City of Modesto*, 38 F.Supp.3d 1162, 1181 (E.D. Cal. 2014). “Thus, if a court finds that police officers did not use excessive force against a plaintiff under federal law, it should also find no assault and battery under state law. Alternatively, if a court finds that police officers did use excessive force against a plaintiff under federal law, it should find assault and battery under state law.” *Briley*, 2008 WL 4443894, at \*3.

Defendants argue that Plaintiffs’ battery claim fails as the force used was reasonable. (Doc. 31-1 at 29.) Defendants’ argument is derivative of their argument that Defendant Crain did not use excessive force under the Fourth Amendment. As previously discussed, the Court has concluded that a reasonable jury could find that excessive force was used, and therefore, there is also a triable issue as to Plaintiffs’ battery claim. Accordingly, the Court DENIES Defendants’ motion for summary judgment as to Plaintiffs’ claim for battery.

## 2. Negligence

On January 6, 2023, the parties filed a stipulation of dismissal as to Plaintiffs’ negligence claim against Defendants Crain and the County of Stanislaus. (Doc. 62.) Despite Plaintiff’s earlier opposition to Defendants’ motion for summary judgment on this claim, there is now no opposition. Accordingly, the Court GRANTS Defendants’ motion for summary judgment as to Plaintiffs’ claim for negligence.

## VII. Conclusion and Order

For the reasons stated, IT IS HEREBY ORDERED as follows:

1. Plaintiffs’ motion for partial summary adjudication is DENIED;
2. Defendants’ motion for summary judgment is GRANTED as to the following matters:
  - a. Plaintiffs’ Second Claim for *Monell* liability against Defendant Stanislaus County; and
  - b. Plaintiffs’ Fifth Claim for negligence against Defendants Stanislaus County and Nathan Crain;
3. Defendants’ motion for summary judgment is otherwise DENIED; and
4. This matter is set for a STATUS CONFERENCE on **March 9, 2023, at 9:30 AM in Courtroom 8 (BAM) before the undersigned.** The parties shall appear at the

1 conference with each party connecting remotely either via Zoom video conference or  
2 Zoom telephone number. The parties shall be provided with the Zoom ID and  
3 password by the Courtroom Deputy prior to the conference. The Zoom ID number  
4 and password are confidential and are not to be shared. Appropriate court attire  
5 required.

6  
7 IT IS SO ORDERED.

8 Dated: February 15, 2023

/s/ Barbara A. McAuliffe  
9 UNITED STATES MAGISTRATE JUDGE  
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